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IN THE
COURT OF APPEALS OF INDIANA

CITY OF MUNCIE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 93A02-0611-EX-1016
	)	
EDDIE WATSON,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE INDIANA WORKER'S COMPENSATION BOARD
Application No. C-172248

April 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

The City of Muncie ("Muncie")[1] appeals the decision of the Indiana Worker's Compensation Board ("the Board") awarding Eddie Watson medical expenses and temporary total disability benefits for injuries that resulted from pushing his hand through a plate glass window. Watson requests that we order a ten-percent increase in his award pursuant to Indiana Code Section 22-3-4-8(f). We affirm the Board's decision and order that Watson's award be increased by ten percent.

Issues

We address the following issue raised by Muncie:

I. Whether the Board erred in concluding that Watson is entitled to compensation under the Worker's Compensation Act ("the Act").

We also address the following issue raised by Watson:

II. Whether Watson is entitled to a ten-percent increase in his award pursuant to Indiana Code Section 22-3-4-8(f).

Facts and Procedural History

The facts most favorable to the Board's decision indicate that Watson was employed by Muncie's sanitary district. On the morning of November 1, 2004, Watson was in the employee break room with two other employees. Watson's supervisor, Stephen Ballman, entered the break room and asked Watson to sign a non-work-related document.[2] Watson refused. Ballman then gave Watson a job assignment. Watson stated that he did not want to

[1] Muncie's briefs list "ESI" as a second appellant-defendant. The record does not reveal ESI's identity or its involvement, if any, with these proceedings.

[2] The record indicates that the document was a release form for hunting activities on a third party's property.

do the assignment. Ballman told Watson, " You will[.]" Tr. at 5. Watson responded, "Yes, I will[.]" *Id*. Ballman cursed at Watson, which "agitated" him. *Id*.

Watson left the break room and slammed a locker with his hand. He then went to "leave the building to do as [he] was instructed[.]" *Id*. at 41. Just as Watson reached the door, which had a wire-reinforced plate glass window, a coworker slammed the door in his face. *Id*. at 5. Watson pushed on the door with his left hand "probably … harder than [he] would have if [he] hadn't been upset and [his] hand went through the glass[.]" *Id*.

Watson filed a worker's compensation claim. Muncie asserted as a defense that Watson's injuries were knowingly self-inflicted and that he was therefore barred from compensation pursuant to Indiana Code Section 22-3-2-8. On October 5, 2005, a single hearing member held a hearing on Watson's claim. On April 20, 2006, the single hearing member issued a decision with the following findings and conclusions:

> FINDINGS
>
> 1. [Watson] was a credible witness on his own behalf, and discredited the written statements of some defense witnesses through his own testimony and cross-examination of various witnesses.
> 2. [Watson] was not engaged in horseplay at the time of his accident.
> 3. [Watson's] injuries were not self-inflicted.
> 4. [Watson's] injuries arose following a work-related argument concerning [Watson's] work assignment.
> 5. [Watson] was upset at the time he sustained his injuries regarding both work-related and non work-related issues discussed with coworkers.
> 6. [Watson] has been seen by Dr. Riley concerning stress and anxiety, at least a portion of which arose out of situations at work.
>
> CONCLUSIONS
>
> 1. [Watson] suffered an injury by accident arising out of and in the course and scope of his employment on November 1st, 2004.

> 2. [Watson's] claim for benefits and compensation under the Indiana Worker's Compensation Act is not barred by the provisions of I.C. 22-3-2-8.
> 3. [Watson] is entitled to reimbursement of medical expenses incurred and to additional authorized medical care and treatment for his injuries sustained on November 1st, 2004.
>
> This care arises from the injuries to [Watson's] left hand and also includes further counseling or psychotherapy in connection with [Watson's] stress and anxiety suffered at [Muncie's] facility.
>
> [Watson] shall be provided with future care as determined necessary by his treating physicians.
>
> It is the understanding of the Board that [Watson] may need some additional surgery on his left hand; however, any additional amounts of counseling or psychotherapy are unknown at this time.
>
> 4. [Watson] is entitled to temporary total disability benefits for the time he was off work due to his hand injury, and for any time [Watson] is unable to complete his work duties in the future due to future hand surgery and recuperation therefrom.
>
> This file shall remain open for further proceedings regarding any permanent partial impairment [Watson] may have sustained by way of his injuries which occurred on November 1st, 2004.

Appellant's App. at 26-27.

Muncie applied for review by the full Board. After a hearing, on September 20, 2006, the Board adopted and affirmed the single hearing member's decision. This appeal ensued.

Discussion and Decision

I. Entitlement to Worker's Compensation

"The Act provides compensation for employees who suffer injuries that occur 'by accident arising out of and in the course of their employment.'" *Bowles v. Griffin Indus.*, 855 N.E.2d 315, 320 (Ind. Ct. App. 2006) (quoting Ind. Code § 22-3-2-5), *trans. denied* (2007).

> Whether an injury arises out of and in the course of employment is a question of fact to be determined by the Board. Both requirements must be met before compensation is awarded, and neither alone is sufficient. The person who seeks worker's compensation benefits bears the burden of proving both elements.

Manous v. Manousogianakis, 824 N.E.2d 756, 763 (Ind. Ct. App. 2005) (citations omitted). No compensation is allowed for an injury "due to the employee's knowingly self-inflicted injury[.]" Ind. Code § 22-3-2-8. The employer bears the burden of establishing that the employee's injury was knowingly self-inflicted. *Id*.

We first address Muncie's contention that the Board erred in finding that Watson's injuries were not self-inflicted. "A reviewing court will not disturb the findings of fact of the Worker's Compensation Board if the findings are supported by substantial evidence." *Bertoch v. NBD Corp.*, 813 N.E.2d 1159, 1163 (Ind. 2004). Muncie bore the burden of proof on this issue and cannot show reversible error by arguing that the evidence is insufficient to support the Board's finding. *American Cablevision v. Review Bd. of Ind. Employment Sec. Div.*, 526 N.E.2d 240, 242 (Ind. Ct. App. 1988). "Whether an employee's injury was self-inflicted is uniquely (although not conclusively) a factual matter for the Board. The decision is a matter of law only when the evidence and facts presented at the hearing are uncontradicted and support but one reasonable conclusion." *Ind. State Police v. Wiessing*, 836 N.E.2d 1038, 1046 (Ind. Ct. App. 2005) (citations, brackets, and quotation marks omitted), *trans. denied* (2006). When reviewing a negative decision issued by the Board, we neither reweigh evidence nor judge the credibility of witnesses. *Outlaw v. Erbrich Prods. Co.*, 777 N.E.2d 14, 26 (Ind. Ct. App. 2002), *trans. denied* (2003).

In excerpting Watson's testimony regarding the events leading up to his hand crashing through the window, Muncie conveniently omits his statement that a coworker slammed the door in his face as he attempted to exit the building. *See* Tr. at 5 ("Just as I got to the door he slammed the door shut in my face."). This evidence supports the Board's determination that

Watson's injuries were not self-inflicted.[3] We therefore affirm the Board's resolution of this issue.[4]

Next, we address Muncie's contention that the Board erred in finding that Watson's injuries arose out of and in the course of employment. With respect to such matters, we have stated that

> [a]n injury arises "out of employment" when a causal nexus exists between the injury sustained and the duties or services performed by the injured employee. This causal relationship is established when a reasonably prudent person considers a risk to be incidental to the employment at the time of entering into it or when the facts indicate a connection between the conditions under which the employee works and the injury. An injury arising "in the course of employment" refers to the time, place, and circumstances surrounding that injury. In addition, for an injury to arise out of and in the course of employment it must occur within the period of employment, at a place or area where the employee may reasonably be, and while the employee is engaged in an activity at least incidental to his employment. Whether an injury arises out of and in the course of employment depends upon the facts and circumstances of each case. And when interpreting those facts, it is well settled that courts should liberally construe the words "arising out of" and "in the course of employment" to accomplish the humane purposes of the Act.

Price v. R & A Sales, 773 N.E.2d 873, 875 (Ind. Ct. App. 2002) (citations omitted), *trans. denied*. In reviewing the Board's determination, "we are confined to considering only the

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[3] In a deposition excerpt that appears in Muncie's appellant's appendix, Watson testified to his belief that "another individual was holding that door closed while [he] attempted to exit[.]" Appellant's App. at 6. Muncie did not offer the excerpt into evidence at the hearing before the single hearing member and quotes selectively therefrom in its appellant's brief. Appellant's Br. at 8. To the extent Muncie complains that the single hearing member did not specifically find that Watson's coworker slammed the door in his face, we note that a general judgment standard applies to any issue upon which the factfinder has not found and that we may affirm a general judgment on any theory supported by the evidence. *Dewbrew v. Dewbrew*, 849 N.E.2d 636, 640 (Ind. Ct. App. 2006).

[4] Consequently, we need not address Muncie's argument that Watson's injuries were not "knowingly" self-inflicted.

evidence favorable to the decision and any favorable inferences therefrom." *Wiessing*, 836 N.E.2d at 1044.

Muncie characterizes Watson's pushing of the door as a voluntary attack on "an inanimate object" and cites several cases involving fights between employees and third parties for the proposition that Watson's conduct was not "in any way the type of conduct associated with the normal duties of employment." Appellant's Br. at 10, 13. Watson acknowledges that he was "angry over [the] course of events" but argues that "pushing the door open so that he [could] go and perform his work assignment [was] incidental to his employment with [Muncie]." Appellee's Br. at 12. We agree. Therefore, we affirm the Board's decision in Watson's favor.

II. Entitlement to Increased Award

Indiana Code Section 22-3-4-8(f) provides, "An award of the full board affirmed on appeal, by the employer, shall be increased thereby five percent (5%), and by order of the court may be increased ten percent (10%)." We have stated that "[w]here this court affirms an award by the Board, the appeal was not frivolous, and appellate review was not thwarted by the actions of the employer, the award should be increased by 5%, but not by 10%." *Tanglewood Trace v. Long*, 715 N.E.2d 410, 416 (Ind. Ct. App. 1999), *trans. denied*.

Here, Watson claims that he is entitled to a ten-percent increase, characterizing Muncie's arguments as "frivolous" and taking Muncie to task for mischaracterizing the record, failing "to include Watson's testimony in the appropriate context[,]" and relying "on witnesses the Board determined were not credible." Appellee's Br. at 15.

In its reply brief, Muncie baldly asserts that

> [i]n this particular case, a bifurcated hearing was conducted for the benefit of the parties to determine whether or not Watson's injuries were compensable at an early stage so as not to delay medical care or treatment and not to prejudice the parties. No benefits or compensation were awarded and the sole issue determined was whether or not the injury was compensable. As no benefits or compensation were awarded, there is no basis to increase the award by five (5) or ten (10) percent.

Appellant's Reply Br. at 7-8.

Muncie's assertion is patently false. The single hearing member's order, which was adopted and affirmed by the full Board, specifically frames the "issues for determination by the Worker's Compensation Board" as whether Watson is entitled to compensation under the Act and, if so, how much and which forms of compensation he is entitled to recover. Appellant's App. at 25-26. The order does not award Watson a lump sum, but it does award him medical expenses and temporary total disability benefits and leaves the file open for further proceedings regarding permanent partial impairment benefits. *Id*. at 27. We also note that by the time of the October 2005 hearing, Watson had had three surgeries on his wrist and had incurred thousands of dollars in medical bills. Tr. at 5-7. We remind Muncie's counsel of his duty of candor toward the tribunal pursuant to Indiana Professional Conduct Rule 3.3 and admonish him to refrain from misstating the record in future cases.

In view of the aforementioned misstatements of the record, as well as Muncie's heavy reliance on evidence unfavorable to the Board's decision and its spurious arguments, we hereby order Watson's award increased by ten percent. *See Graycor Indus. v. Metz*, 806 N.E.2d 791, 801-02 (Ind. Ct. App. 2004) (increasing award for medical expenses and temporary total disability benefits by ten percent based on "extended period" that employee

had been prevented from receiving benefits and employer's "patent disingenuity with regard to some of its arguments."), *trans. denied*.

Affirmed.

SULLIVAN, J., and SHARPNACK, J., concur.